BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

HOWARD GILCHRIST and VELMA GILCHRIST,	)	
Petitioners,	)	
vs.	)	
	)	LUBA No. 90-036
CITY OF PRINEVILLE,	)	
	)	FINAL OPINION
Respondent,	)	AND ORDER
and	)	
ELON WOOD,	)	
Intervenor-Respondent.	)	

Appeal from City of Prineville.

James W. Powers, Prineville, filed the petition for review and argued on behalf of petitioners.

No appearance by respondent.

James B. Minturn, Prineville, filed the response brief and argued on behalf of intervenor-respondent. With him on the brief was Minturn, Van Voorhees, Larson & Dixon.

KELLINGTON, Referee; SHERTON, Chief Referee; HOLSTUN, Referee, participated in the decision.

AFFIRMED 09/06/90

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Kellington.

NATURE OF THE DECISION

Petitioner appeals a decision of the Prineville City Council which approves a conditional use permit.

MOTION TO INTERVENE

Elon Wood moves to intervene on the side of respondent in this appeal proceeding. There is no objection to the motion and it is allowed.

FACTS

The subject property is approximately a half city block in size, and is zoned General Residential (R-2). Intervenor-respondent (intervenor) proposes to construct an 11 unit apartment building on the property, a conditional use in the R-2 zone. The staff report provides other relevant facts:

> "Th[e] site is presently occupied by two (2) small single-family dwellings * * *. The site is on City water and sewer lines.
>
> "The total site area of 26,880 square feet exceeds the minimum of 16,500 square feet required for an 11 unit two story multi-family dwelling served by public water and sewer systems, under Section 3.020(3)(L) of the City Zoning Ordinance.
>
> "The proposed structure is to cover approximately 21.25 percent of the site, which is less than the 30 percent maximum lot coverage permitted under Section 3.020(4)(A) of the Zoning Ordinance. The front, side and rear setbacks of 22 feet, 18/18 and 62 feet exceed the required minimum setbacks of 20 feet, 3 feet and 10 feet. The proposed two story building is to be about 23 feet high, which is less than the maximum height of 2 1/2 stories/30 feet.

> "A storeroom is provided for indoor storage. The site is within 500 feet of a fire hydrant at the corner of Southeast Third Street and Dunham Street, as required under Section 6.050(13)(C) of the Zoning Ordinance.
>
> "Under Section 6.050(13)(D) of the Zoning Ordinance, a minimum of 3,600 square feet is required for recreation, or group or community activities. An area measuring approximately 5,304 square feet is available for these purposes between the rear of the structure and the parking area. In addition, the site is located directly to the south of Davidson Park, on the north side of Southeast Third Street." Record 41.

The planning commission denied intervenor's application, and intervenor appealed to the city council. The city council overturned the decision of the planning commission and approved intervenor's application for a conditional use permit. This appeal followed.

ASSIGNMENTS OF ERROR

OAR 661-10-030(3)(d) requires that petitions for review "[s]et forth each assignment of error under a separate heading."[1] We address those assignments of error which are sufficiently stated to identify a legal theory upon which we could reverse or remand the city's decision. Faulkender v. Hood River County, ___ Or LUBA ___ (LUBA No. 88-081, January 9, 1989); Bjerk v. Deschutes County, ___ Or LUBA ___ (LUBA

[1]Under the portion of the petition for review captioned "Petitioners' Assignments of Error and Arguments," petitioners include assignments of error "A" through "N." With the exception of assignment of error "B," which presents two sentences of argument, each assignment consists of a single sentence of argument.

No. 88-067, November 11, 1988); Deschutes Development v. Deschutes County, 5 Or LUBA 218, 220 (1982).

ASSIGNMENT OF ERROR "A"

Petitioners contend:

> "All documents and evidence relied upon by the Intervenor-respondent, Dr. Elon Wood, were not submitted to the Prineville, Oregon, City Counsel [sic] nor made available to the public within 20 days of the evidentiary hearing in violation of ORS 197.763 * * *." Petition for Review 2.

We understand petitioners to argue certain documents were not properly or timely submitted to the city council as required by ORS 197.763. However, petitioners do not identify the "documents and evidence" in the record they allege were not properly or timely submitted to the city. Additionally, petitioners do not explain how the alleged failure to timely or properly submit "documents and evidence" caused any prejudice to their substantial rights.

Assignment of error "A" is denied.

ASSIGNMENT OF ERROR "B"

This assignment of error states:

> "After the Planning Commission denial, on December 7, 1989, and before the City Counsel [sic] reversal decision on February 13, 1990, the conditional use request of Dr. Wood was modified as to aisle width and alley backup, etc. * * * and therefore, Dr. Wood never really appealed the same conditional use permit request which was heard by the City Planning Commission, and thus, the City Counsel [sic] wrongfully ruled on a new conditional use permit request of Dr. Wood. In the alternative, if the City Counsel [sic] based its decision on what was originally heard by the Prineville City Planning Commission with a 17.3

> feet aisle wide [sic] for the parking lot, the City Counsel [sic] directly violated the City Zoning Ordinance Section 4.060(4)(j) which requires a 25 foot aisle width * * * and the City Counsel [sic] directly violated the City Zoning Ordinance Section 4.060(4)(h) which prohibits installing parking stalls which force vehicles to back into the abutting alley * * *. Petition For Review 3.

Regarding petitioners' complaint that the city council approved a modified conditional use permit, petitioners fail to explain why such action by the city council constitutes an error warranting reversal or remand.

Turning to petitioners' alternative argument under assignment of error "B," Prineville Zoning Ordinance (PZO) 4.060(4)(j) states:

> "The standards set forth in the table that follows shall be the minimum for parking lots approved under this ordinance * * *."

The table which follows PZO 4.060(4)(j) provides various "aisle widths" corresponding to particular "parking angles." For a 90 degree parking angle, a 25 foot aisle width is required. No other parking angle requires an aisle width as great as 25 feet. While petitioners do not identify the parking angle for the proposed apartment parking lot sufficiently to enable this Board to ascertain which aisle width standard petitioners believe is violated, petitioners cite minutes in the record summarizing testimony from the project contractor that the aisle width for the parking lot had been increased on the "plot plan" to 25 feet since the

planning commission meeting.[2] These minutes suggest that (1) it was assumed that the original site plan had identified an aisle width which was too small, and (2) the site plan had been corrected to add the required aisle width. However, the city's findings do not identify the aisle width for the parking lot, after the modification of the site plan. Nevertheless, assuming that a 25 foot aisle width is required for the proposed parking lot, we may not reverse or remand the city's decision on the basis that there are no findings establishing the parking lot aisle width, if there is evidence in the record which "clearly supports" a determination that the approved aisle width is, in fact, 25 feet. ORS 197.835(9)(b).[3]

The cited testimony from the project contractor that the aisle width was increased on the site plan to 25 feet is evidence in the record which we believe "clearly supports" a determination that the aisle width is 25 feet. Indeed, it is not disputed that the aisle width for the parking lot

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[2]For clarity, we refer to this "plot plan" as the "site plan," as does the city in its order.

[3]ORS 197.835(9)(b) provides:

> "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions, or failure to adequately identify the standards or their relation to evidence in the record, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record * * *"

shown on the modified site plan approved by the city council is 25 feet.[4] We therefore reject petitioners' contention that the city's decision violates PZO 4.060(4)(j).

Petitioners also contend the city's decision violates PZO 4.060(4)(h). PZO 4.060(4)(h) provides:

> "Except for single-family and duplex dwellings, groups of more than two parking spaces shall be so located and served by a driveway that their use will require no backing movements or other maneuvering within a street right-of-way other than an alley."

This PZO provision does not, as petitioners suggest, prohibit backing movement into an alley. To the contrary, this provision prohibits backing movement only "within a street right-or-way other than an alley."

This assignment provides no basis for reversal or remand of the city's decision.

Assignment of error "B" is denied.[5]

ASSIGNMENT OF ERROR IN SUPPLEMENTAL PETITION FOR REVIEW

Petitioners contend the city erred by failing to

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[4]To the extent petitioners also argue the city council did not have the modified site plan before it for review, the findings are to the contrary:

> "The site plan in the appeal packet is different than the one submitted to the planning commission. The parking lot area has been redrawn that [sic] increases one space and enlarges the back-up area." Record 6.

[5]Petitioners' other assignments of error in the petition for review cite aspects of the proposal with which petitioners disagree, but either fail to identify approval criteria violated by the proposal, or are inadequately developed to furnish a basis for reversal or remand of the city's decision. We reject these assignments of error without further discussion.

explain why certain evidence was accepted and other evidence was rejected by the city.

In Douglas v. Multnomah County, ___ Or LUBA ___ (LUBA No. 89-086, January 12, 1990), slip op 17, we stated that while a local government is required to identify in its findings the facts it relied upon in reaching its decision:

> "* * * it is not required to explain why it chose to balance evidence in a particular way or to identify evidence it chose not to rely on."

See also Kellogg Lake Friends v. City of Milwaukie, 16 Or LUBA 755, 765 (1988); Ash Creek Neighborhood Ass'n v. City of Portland, 12 Or LUBA 230, 236-238 (1984).

Because the city is not required to explain why it accepted or rejected particular evidence in making the challenged decision, this assignment of error is denied.

The city's decision is affirmed.